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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,872	10/21/2003	Edwin J. Hlavka	00185/000778-US1	3330
76808	7590	01/27/2012		
Leason Ellis LLP One Barker Avenue Fifth Floor White Plains, NY 10601-1526			EXAMINER PRONE, CHRISTOPHER D	
			ART UNIT	PAPER NUMBER
			3738	
			MAIL DATE	DELIVERY MODE
			01/27/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/689,872	Applicant(s) HLAVKA ET AL.	
	Examiner CHRISTOPHER D. PRONE	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 79-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 79-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/22/11 has been entered.

Status of Claims

Claims 1-78 have been cancelled.

Claims 79-87 are pending.

Priority Date

The priority date of this application dates back to provisional application 60420095, filed 10/21/02.

Election/Restriction

Applicant elected Group 1, Species 2, Sub-species 4, and Sub-species 17 without traverse on 5/20/08.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 79 and 80 are rejected under 35 U.S.C. 103 as being unpatentable over Koike et al (Koike) USPN 5,716,367 in view of Ogiu et al (Ogiu) USPN 4,235,238.

Koike discloses the invention substantially as claimed being a catheter assembly comprising a central lumen defined by a sidewall and a distal portion comprising a tip and an opening 11 spaced proximal from the tip in the side wall extending through to the central lumen. Koike further discloses an anchor delivery structure comprising a locking element is capable of being slidably / adjustably coupled to an anchor or a tensile member. The catheter of Koike can be bent or rotated to move from a position that adapts to the shape of the operation to a position where it does not adapt to the shape of the operation site.

However, Koike does not disclose use of a plurality of anchors comprising a rigid distal portion and a proximal portion interconnected to at least one tensile member comprising a free proximal end.

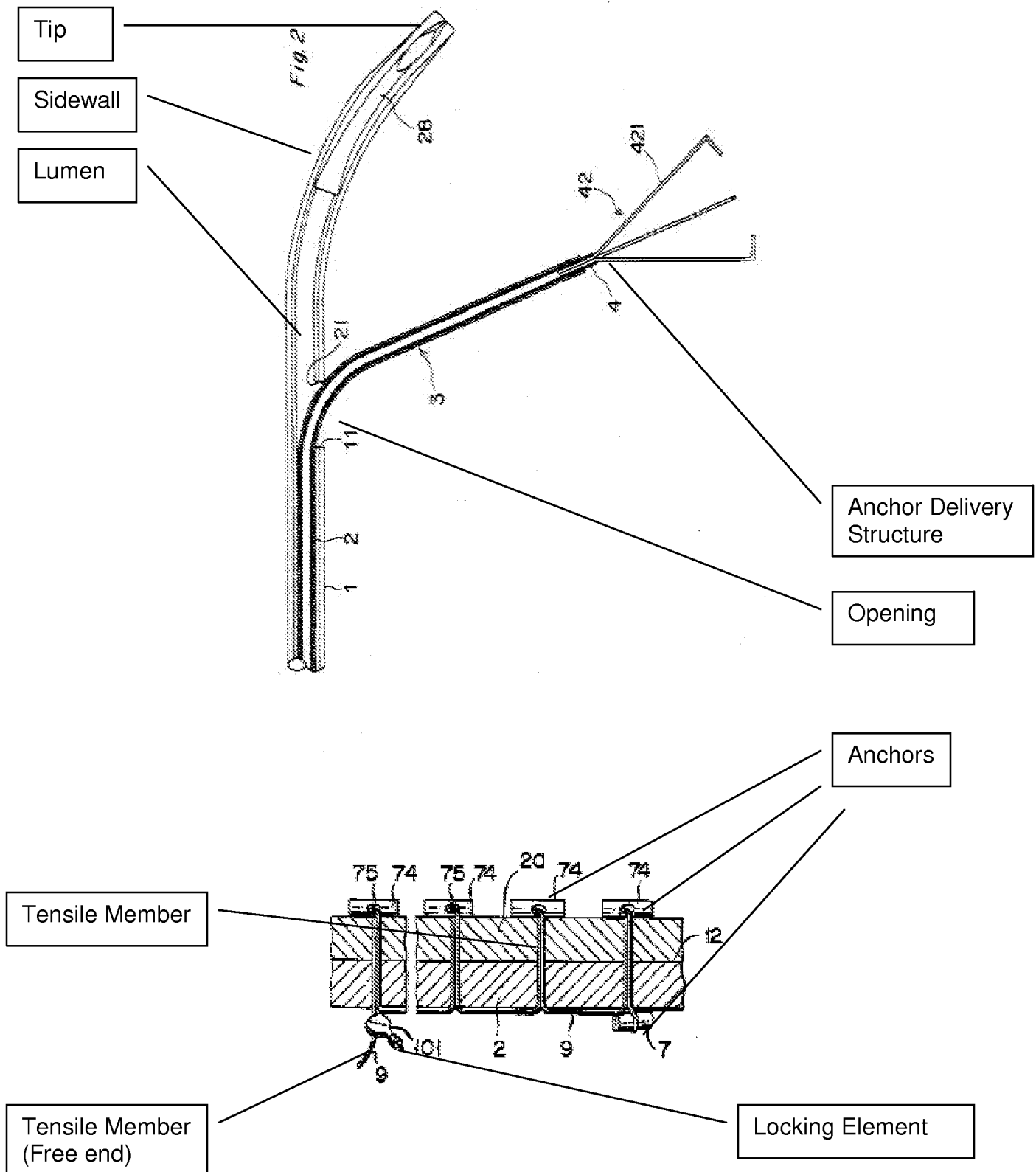
Ogiu teaches the use of an anchor delivery system comprising a catheter that serially contains and implants a plurality of anchors 7 comprising a rigid distal portion (upper surface) and a proximal portion interconnected to at least one tensile member 9 comprising a free proximal end that extends outside of the body (see figure 1) and a

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locking element 101 best in figures 45 and 52 in the same field of endeavor for the purpose of allowing the operator to accurately arrange a plurality of separate tissue regions in a desired configuration.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the anchor delivery device of Koike with the delivery device and the anchors system disclosed by Ogiu in order to allow the operator to secure a plurality of tissue points together into a desired configuration. See first figure below for details.

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Claims 81-87 rejected under 35 U.S.C. 103(a) as being unpatentable over Koike in view of Ogiu (Combination 1) as applied to claims 79 and 80 above, and further in view of Bonutti US 2001/0041916 A1.

Combination 1 discloses the invention substantially as claimed being described *surpa*. However, Combination 1 does not disclose the use of separate tensile members for each additional anchor member.

Bonutti teaches the use of a method for implanting a plurality of tissue anchors comprising a rigid distal end and a proximal end attached to a tensile member having a free end extending outside of the body. The figures of Bonutti disclose a single tensile member as shown in Ogiu, but Bonutti further discloses that the anchors may each comprise separate suture portions which are tensioned together after the anchors are moved into the body tissue in the same field of endeavor for the purpose of permitting later removal one anchor while leaving the others in place.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the single tensile member as disclosed by Combination 1 with a plurality of separate tension members attached independently to each anchor member and extending outside the body in order to permit later removal or adjustment of one anchor while leaving the others in place.

In regards to the language of intended use defined in new claim 87, this is given limited weight and deemed to be read upon by the combination because it is capable of performing said actions.

Response to Arguments

Applicant's arguments with respect to claims 79-87 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER D. PRONE whose telephone number is (571)272-6085. The examiner can normally be reached on Monday through Fri 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Sweet can be reached on (571) 272-4761. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/THOMAS J SWEET/
Supervisory Patent Examiner, Art Unit 3738

CHRISTOPHER D. PRONE
Examiner
Art Unit 3738

/Christopher D Prone/